

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARC SILVER, *et al.*,  
Plaintiffs,

v.

BA SPORTS NUTRITION, LLC,  
Defendant.

Case No. [20-cv-00633-SI](#)

**ORDER RE: QUESTIONS FOR  
HEARING ON DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Defendant's motion for summary judgment is scheduled for a hearing on December 17, 2021. The Court directs counsel to address the following questions at the hearing:

1. Fruit Images: Both plaintiffs testified at their depositions that they thought the sports drinks contained fruit because the labels contained images of fruit, and that this was appealing to them. Is it correct that the drinks in fact do not contain any fruit, and if so, what consequence does that have for plaintiffs' claims?
2. What is plaintiffs' theory about how BA Sports has violated the FDA's labeling regulation found at 21 C.F.R. § 101.22(i)?
3. "Superior hydration": In plaintiffs' view, how do plaintiffs prevail on their claim that "superior hydration" is false or misleading?

**IT IS SO ORDERED.**

Dated: December 16, 2021



SUSAN ILLSTON  
United States District Judge